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No. 85-228

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

LINDA LASSITER-GEERS,

Petitioner,

v.

GEORGE RICHARD REICHENBACH,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION ON BEHALF OF GEORGE RICHARD REICHENBACH RESPONDENT

JOEL H. PACHINO
FRIEDMAN, PACHINO & GARCIA
210 DUNKIRK BUILDING
(301) 284-6060
Counsel of Record for Respondent

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RESPONDENT

STATEMENT OF THE CASE

Petitioner seeks Writ of Certiorari to the Court of Appeals of Maryland to review its decision in this case reported at 303 Md. 88, 492 A. 2d 303 (1985) which affirmed the Circuit Court for Baltimore County, Maryland in holding that where parents of a minor child cannot agree on the proper surname for the minor child, the trial court shall select the surname which is in the best interests of the minor child.

STATEMENT OF FACTS

George Reichenbach, Respondent, and Linda Reichenbach, Petitioner, were married and voluntarily separated on June 1, 1980. Within three weeks thereafter, the parties learned that Petitioner was pregnant. There is no question that Mr. Reichenbach was the father of the daughter born to Petitioner on January 17, 1981.

The evidence showed and it is admitted by the Petitioner that on the day the child was born, she, without the knowledge of consent of her husband, registered the birth of the child with the State Registrar

of Vital Records as "JAMIE LAUREN LASSITER", Lassiter being the Petitioner's maiden name.

It should be noted that when Petitioner "gave" the child the surname of Lassiter, Petitioner's surname was still Reichenbach and would remain Reichenbach until March 30, 1982, when a Decree of Divorce A Vinculo Matrimonii was passed restoring Petitioner her maiden name.

Respondent said that he did not know that the Petitioner had "given" the child the surname of Lassiter until August, 1981.

Respondent testified that Petitioner had told him that she gave the child her maiden name because "that is what she wanted". Further, Respondent stated that had his wife consulted with him about the name he would not have allowed it.

When the parties were divorced the Decree awarded custody and guardianship to Appellant. Additionally, the Decree specifically provided "that the determination of the surname of the minor child of the parties be and the same is hereby reserved for future determination and further Orders of this Court..."

Petitioner remarried on June 3, 1983 and is presently Linda Lassiter-Geers.

On April 4, 1984, Respondent petitioned the Court to rule on the previously reserved question under the Decree of March 30, 1981 as to the surname of the child. Petitioner's Answer asked that the petition be dismissed.

At the time of the hearing, the minor child was three (3) years nine (9) months old.

Respondent's evidence showed that he was the natural father of the child and so listed on the birth certificate. That he had come to the hospital the day Jamie was born. That he has continuously supported the child since birth and has a healthy on-going relationship with his daughter.

Respondent stated that he wanted his daughter to bear his surname Reichenbach, and that it was in the child's best interest that she bear the name Reichenbach because of the confusion that would be caused by her living with her mother who used the name (LASSITER-GEERS), in a home where another surname was used (GEERS), and the child carrying a third name (LASSITER), none of

which were his, the natural father of the child, (REICHENBACH).

Following testimony and argument, the Chancellor found that it was in the best interests of the child that her legal surname be Reichenbach and signed an Order dated October 23, 1984 determining the child's surname as Reichenbach. Petitioner entered an appeal.

The Court of Appeals of Maryland affirmed the trial court by its opinion dated May 15, 1985 which opinion is reported at 303 Md. 88, 492 A. 2d 303. The Court of Appeals held that the lower court applied the appropriate test of "the best interests of the child", and that its application of that test was not an abuse of the trial court's discretion.

Petitioner seeks review of that decision.

REASONS FOR DENYING THE WRIT

I. The decision of the Court of Appeals of Maryland is in full accord with all decisions on this well settled point of law.

Certiorari is sought in connection with the decision of the Court of Appeals of Maryland which

affirmed the trial court. Both courts ruled: that the sole consideration when parents contest a surname should be the child's best interests.

Petitioner does not contend that the test used by the Maryland court was incorrect, unlawful or inappropriate.

Petitioner does not contend that the test used is in conflict with the test that would be applied by any sister state under similar circumstances.

In short, Petitioner agrees that the "best interest of the child" test was proper in this case.

II. The standard by which the action of the trial court was reviewd by the Court of Appeals was proper.

The Court of Appeals specifically found that the trial judge did not abuse his discretion in determining that it was in the best interest of the child that her surname be Reichenbach.

That standard of review abuse of discretion - is the same test used by the Court of Appeals of Maryland in reviewing child custody cases. Davis v. Davis 280 Md. 119, 372 A. 2d 231, cert denied 434 US 939, 98

S. Ct. 430, 54 L Ed 299 (1977) rehearing denied 434 US 1025, (1978) Christman v. O'Connor 36 Md. App. 263, 373 A. 2d 326, (1977).

Petitioner does not attack the standard of review used by the Maryland Court of Appeals as being incorrect, unlawful or inappropriate.

III. There exists in this instance no special or important reason for review by the Court.

Petitioner would have this Court believe that the trial judge ordered that the child bear the surname Reichenbach solely because the trial judge believed that were he to give the child the mother's (maiden) name people might consider that the child was illegitimate. This, Petitioner says, raises unconstitutional gender-based discrimination against Petitioner.

Respondent says the "illegitimacy aspect" was not the basis of the trial court's decision.

The trial judge had the opportunity to see the parties, to evaluate their testimony and to judge their motives. The trial judge was aware that when the parties were married they held themselves out as Mr. and

Mrs. Reichenbach. Mrs. Reichenbach did not elect to keep her maiden name at the time of the marriage. (See Stuart v. Board of Supervisors of Elections for Howard County, 266 Md. 440, 295 A. 2d 223 (1972). That when the child was conceived the parties were still married and the mother was still Mrs. Reichenbach. Even when the child was born and the mother's legal name was still Reichenbach, the mother, without consulting the father "gave" the child her maiden name "LASSITER" by inserting it on the child's birth certificate.

When the Husband confronted the Wife upon learning what she had done and asked the reason why she did this, she said because "that is what (I) wanted". The trial judge heard this testimony, as well.

The testimony showed that the mother had gone to great lengths to attempt to permanently establish the surname of Lassiter. She opened a bank account for the child in the name of Lassiter, obtained a Social Security card for the child in the name of Lassister, all at a time when the child was less than three years old. The Petitioner did these things at a time when she knew the question of the child's surname was still under contest.

All of these actions led to the trial judge's finding that:

> "[T]he mother has created a situation whereby there are three possible (sur)-names (for the child)."

Further that the trial judge was also aware that the father had not been guilty of any conduct inimical to the child which would have been the basis for denying the child the use of the name - Reichenbach. West v. Wright 263 Md. 297, 283 A. 2d 401, (1971). Rather the evidence showed that the father assured the mother that he would support the child when he learned that she was pregnant. That he visited the hospital when the child was born. That he has supported the child since birth, without any court order. That he visits the child regularly and has a loving, healthy relationship with the child.

At the time of the hearing the child was only three years and nine months old. That the trial judge believed that a "change" of name at this stage of the child's life would not be a harm to the child.

Taking all the factors into consideration, and not unaware that most children bear the surname of

their father, and, moreover, a far greater majority of children bear the surname of their father, where the child is born to parents whose legal names are the husband's surname, the trial judge found that it would be in the best interest of the child that her surname be Reichenbach because it would create less confusion for the child.

Clearly the Petitioner's statement that the sole basis for giving the child her father's surname in this case was due to unconstitutional gender-based discrimination against mothers is unjustified under the facts of this case.

CONCLUSION

The decision of which review is sought is, in all respects, in full accord with all decisions. The test used by the trial judge was correct. The standard of review used by the appeal court was correct.

The contention of Petitioner that the sole basis for the granting of the father's surname to the child was unconstitutional gender-based discrimination against mothers is incorrect, rather, it was based on

many factors all of which led to the conclusion that it was in the best interest of the child that she bear the surname of Reichenbach. Hence, there is no special or important reason for certiorari, which should be denied.

Respectfully submitted,

JOEL H. PACHINO
FRIEDMAN, PACHINO & GARCIA
210 Dunkirk Building
Dundalk, Maryland 21222
(301) 284-6060
Counsel for Respondent